UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION

No. 4:12-CV-192-F

ANTHONY L. MCNAIR,)
Plaintiff,)
v.) ORDER
MILTON F. FITCH, JR., JOHN E. CLARK, JR., KEITH WERNER, and JEFFREY A. MARSIGLI,))))
Defendants.)

This matter is before the court for consideration of United States Magistrate Judge James E. Gates' Memorandum and Recommendation ("M&R") [DE-10] on the *pro se* Plaintiff Anthony L. McNair's motion for leave to proceed *in forma pauperis* [DE-1] and the attached proposed complaint. In the M&R, Judge Gates finds Plaintiff's claims to be subject to a previously issued prefiling injunction [*McNair v. Tarboro Dist. Atty's Office*, No. 5:11CV122-FL, 2011 WL 1743478 (E.D.N.C. May 2, 2011)], and recommends that the case therefore be dismissed. Additionally, Judge Gates recommends that Plaintiff be sanctioned \$350.00. Plaintiff filed an objection [DE-11] to the M&R and two additional motions, the first with the caption "motion for protection and speedy" [DE-6] and the second with the caption "motion for joinder of parties" [DE-8].

As Judge Gates states in the M&R, a pre-filing injunction has been entered against Plaintiff to address his consistent pattern of filing frivolous lawsuits. Judge Gates accurately describes the proposed complaint attached to Plaintiff's motion for leave to proceed *in forma pauperis*, as well

as the subsequent "involuntarily [sic] affidavit memorandum and recommendation" [DE-9], and the applicability of the pre-filing injunction to both.¹

Plaintiff filed an objection to the M&R. In it, however, Plaintiff fails to set forth any facts or argument that adequately disputes Judge Gates' findings. Based on a de novo review of the record, the court finds that the M&R should be adopted, the case should be dismissed, all pending motions should be denied as moot, and plaintiff should be sanctioned \$350.00.

For the foregoing reasons, it is ORDERED that:

- 1. The court ADOPTS the M&R in its entirety;
- Plaintiff's complaint is DISMISSED;
- 3. All pending motions are DENIED as moot; and
- 4. Plaintiff shall PAY sanctions in the amount of \$350.00.

SO ORDERED.

This the $4^{\prime\prime}$ day of June, 2013.

James C. Fox

Senior United States District Judge

¹ The court notes that, in documents filed after the M&R, it appears that plaintiff was sentenced in November of 2007; the sentence was vacated in April of 2009; and plaintiff was re-sentenced in August of 2009. [DE-11-1.]